



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0518]

RIN 1625-AA00

Safety Zone; Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard has established a temporary safety zone for a portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay, Santa Rosa Beach, FL. This action is necessary for the protection of persons and vessels, on navigable waters, during the construction of a subaqueous water main. Entry into or transiting in this zone will be prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective in the CFR on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30, 2012. This rule is effective with actual notice for purposes of enforcement on October 12, 2012. This rule will remain in

effect through November 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0518. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Lenell J. Carson, Sector Mobile, Waterways Division, U.S. Coast Guard; telephone 251-441-5940, e-mail [Lenell.J.Carson@uscg.mil](mailto:Lenell.J.Carson@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
GICW	Gulf Intracoastal Waterway
COTP	Captain of the Port
LLNR	Light List Number
TFR	Temporary Final Rule

## A. Regulatory History and Information

The Coast Guard published a NPRM in the Federal Register on July 10, 2012 (77 FR 40541), providing proper notice and opportunity to comment on this rule. No comments were received nor were there any requests for a public meeting. The Coast Guard also published a TFR in the Federal Register on September 14, 2012 (77 FR 56772).

The Coast Guard is making this rule effective less than 30 days after publication in the Federal Register pursuant to authority the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). This provision authorizes an agency to make a rule effective less than 30 days after publication in the Federal Register when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. This action is necessary for the protection of persons and vessels, on navigable waters, during the construction of a subaqueous water main that begun in June 2012. It would be contrary to public interest to delay the effective date of the rule.

## B. Basis and Purpose

A 36" subaqueous water main is being constructed across the Choctawhatchee Bay to improve water system delivery. The water

main will cross the GICW, a federally maintained navigable channel. Construction of the water main and the required use of turbidity silt curtains pose significant safety hazards to both vessels and mariners operating in or near the GICW. The COTP Mobile is establishing a temporary safety zone for a portion of GICW in Choctawhatchee Bay, Santa Rosa Beach, FL. This temporary safety zone is deemed necessary to protect persons and vessels during construction of the water main across the GICW. The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The COTP anticipates some impact on vessel traffic due to this regulation. However, the temporary safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

#### C. Discussion of Comments, Changes and the Temporary Final Rule

The regulatory text for this rule has been amended reflecting an updated effective period and anticipated closure times for the safety zone. The original effective date of September 14, 2012 to October 14, 2012 has been amended to read; October 12, 2012 to November 30, 2012. This amendment is

necessary to reflect changes in the project's timeline due to delays caused by severe tropical weather.

The Coast Guard has established a temporary safety zone for a portion of the GICW in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy "26" (LLNR 31510), to include the entire width of the channel. This rule will protect the safety of life and property in this area. Entry into or transiting in this zone will be prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at (251) 441-5976.

This rule will be effective and enforceable with actual notice from October 12, 2012 to November 30, 2012. The COTP Mobile anticipates that this rule will be enforced for approximately three (3) days, to include a complete Twenty-Four (24) hour closure of the GICW. The COTP Mobile or a designated representative will inform the public through Broadcast Notices to Mariners of the specific enforcement periods throughout the water main construction project as well as any changes in the safety zone.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive

orders.

### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The temporary safety zone listed in this rule will only restrict vessel traffic from entering or transiting a small portion of the GICW. The effect of this regulation will not be significant for several reasons: 1) the COTP Mobile will issue maritime advisories widely available to users of the waterway; 2) this rule will only affect vessel traffic that are subject to transiting the GICW due to draft restrictions; and 3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through Local Notices to Mariners and Broadcast Notices to Mariners. These notifications will allow the public to plan operations around the affected area.

### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-

612), as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the affected portion of the GICW during construction of the water main. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone is limited in size, is of short duration and shallow draft vessel traffic may pass safely around the temporary safety zone.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance

with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate



protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-

4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone for a portion of the GICW in Choctawhatchee Bay, Santa Rosa Beach, FL, for the safety of the public and is not expected to result in any significant adverse environmental impact as described in NEPA. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0518 to read as follows:

§ 165.T08-0518 Safety Zone; Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL.

(a) Location. The following area is a temporary safety zone: a portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy "26" (LLNR 31510), to include the entire width of the channel.

(b) Effective dates. This rule is effective from October 12, 2012 to November 30, 2012.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels not restricted to navigation in the Gulf Intracoastal Waterway by draft and that can safely do so, may pass around the zone while maintaining a safe distance

and transiting at slowest safe navigational speed.

(d) Informational broadcasts. The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: October 12, 2012

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D. J. ROSE,  
Captain, U.S. Coast Guard  
Captain of the Port Mobile

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Date: 11/19/2012]